

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,

Plaintiff,

v.

MONICA TOTH,

Defendant.

Case No. 1:15-cv-13367-MLW

Judge: Mark L. Wolf

Declaration & Proof of Service of Process on Monica Toth

I, Ian Daley, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a professional process server and was hired by the Department of Justice, Tax Division, to serve a summons and complaint in this civil action on Monica Toth. I have served thousands of individuals with legal process. I was instructed originally to go to the residence of Monica Toth at 76 Hallet Hill Road, Weston, Massachusetts 02493 and serve her there with the summons and complaint in this case.
2. I made a significant number of trips to 76 Hallet Hill Road, Weston, Massachusetts. These trips were made on different days of the week, different times of the day, and I sometimes made multiple trips to that address each day.
3. On multiple occasions I saw a man fitting the following description: white male, approximately 6' 1" tall, mustache, with black hair. Once I saw him inside the residence at 76 Hallet Hill Road, Weston, Massachusetts. On this occasion he remained inside the residence, refused to answer the door, and looked through the window at me. When I announced my name and my intention to serve Monica Toth with legal process, he refused to open or answer the door.

4. On subsequent occasions, the male described in ¶3 opened the door but refused to identify himself or state whether he lived at 76 Hallet Hill Road, Weston. He would say only that (a) he knew Monica Toth, (b) that Monica Toth lived at that residence, (c) that Monica Toth was not available at the present time but that she would return in the future, (d) that he had spoken with Monica Toth regarding my efforts to serve her with legal process, (e) that he did not want to accept any documents on her behalf, (f) that she did not want to accept any documents from me, and (g) that she preferred that I send her a letter by first class mail. He also refused to state when Monica Toth would return to 76 Hallet Hill Road, Weston. I gave this man my business card and asked that he or Monica Toth call me to arrange for service of legal process on her. Because service of process by first class mail is not acceptable legal service, I did not send her the materials by first class mail.

5. I frequently saw a vehicle in the driveway at 76 Hallet Hill Road, Weston, when I went there to serve her with process. I saw a vehicle, a Toyota Tacoma, license plate Massachusetts 8920RZ. The movement of the vehicle (being there on some days but absent on other days, and moved around within the driveway) indicated to me that at least one person was living in that house. I suspected that the vehicle either belonged to Monica Toth or the male described in ¶3.

6. The grounds of the house looked well trimmed, reasonably maintained, and there was no obvious stack of mail/newspapers that would indicate that the house was vacant or abandoned.

7. After seeing the man described in ¶3 on many occasions I concluded belatedly that he lived there. I did not serve him because I did not know his name and would have had difficulty proving that I had served a resident of that location, as required by the Federal Rules of Civil Procedure. I also relied on my professional experience to conclude that Monica Toth knew I was trying to serve her with legal process and made a deliberate effort to avoid service of process.

8. After conferring with Trial Attorney Andrew A. De Mello, Department of Justice, Tax Division, I was instructed to follow the Massachusetts Rules of Civil Procedure and serve Monica Toth “by leaving copies [of a summons and complaint] thereof at his last and usual place of abode.” MRCP 4(d)(1). I went on the evening of January 11, 2016, and taped the documents to the front door at 76 Hallet Hill Road, Weston, Massachusetts. The documents were prominently displayed at eye level and were visible to anyone entering or leaving the door.
9. I never received a call from Monica Toth, nor anyone else that lived at her residence, regarding these matters.

I declare under penalty of perjury, that the foregoing is true and accurate. Executed on this

29 day of January, 2016, in Boston, Massachusetts.


IAN DALEY